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A. When a person is on parole and before revocation thereof by parole board is sentenced and committed for second offense, his parole is violated and service of his original sentence is interrupted and suspended. Thereafter imprisonment is attributable to second sentence, and service of unexpired term of original sentence cannot begin to run before the date that such person is returned to prison under parole board warrant.	10-14

B. Sentence of imprisonment of a convicted person commences to run from the date on which such person is committed to jail awaiting transportation to institution designated for service of sentence imposed. 14-16

C. Where prisoner is on unrevoked parole, directions contained in second sentence, which require action of revocation of parole board before such second sentence should begin, are invalid and beyond the power of the sentencing judge, because such direction invades the discretion and authority exclusively reserved to board of paroles. 16-18

D. When a sentence is subject to several constructions, one or more of which may be invalid, that construction which makes such sentence valid is accepted. 18-20

APPENDIX 21-22

Cases Cited

Hammerer v. Huff, 110 Fed. (2nd) 113, (C. C. A. Dist. Col.) 5, 11, 16, 17, 19
Moss v. U. S., 72 Fed (2nd) 30 15
Tippitt v. Squier, 145 Fed. (2nd) 211, (C. C. A. 10) 5, 17, 18, 19
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Zerbst v. Kidwell, 304 U. S. 359 (1938) 5, 11, 12, 17, 19

Statutes Cited

T. 18—U. S. Code, 723 (c) [redacted] 13, 14, 16
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1945

No. ————

ANTHONY TERAMINE,
Petitioner,

v.

C. J. SHUTTLEWORTH, *Warden,*
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Anthony Teramine, respectfully represents unto this Court as follows:

SUMMARY STATEMENT

Anthony Teramine filed his petition for Writ of Habeas Corpus in the District Court for the Eastern District of Michigan, Southern Division, on November 24, 1944, di-

rected to respondent, C. J. Shuttleworth, Warden of Federal Correctional Institution at Milan, Michigan, alleging that petitioner was unlawfully deprived of his liberty in that sentences theretofore imposed upon him were fully executed and satisfied by service thereof (R. 1, 2).

Sentence had been imposed on petitioner in cause 21737 on November 20, 1934, and he received concurrent eight year sentences in Federal Penitentiary at Leavenworth, Kansas; on the same day he entered upon service thereof (R. 7, 8, and 9); petitioner was paroled under this sentence of April 26, 1940 (R. 12, 15); on April 15, 1942, the Parole Board issued its warrant for retaking of petitioner as parole violator, and he was taken into custody and placed in Wayne County Jail at Detroit, on April 18th "awaiting further disposition" (R. 17, 18); the warrant above mentioned was *executed* and petitioner returned to Federal Correctional Institution at Milan, Michigan, on *May 26, 1942* (R. 18); the Board of Parole thereafter on August 7, 1942, revoked petitioner's parole (R. 2) and the petitioner's sentence thereunder was fully executed and satisfied on November 9, 1944 (R. 2, 13).

On May 25, 1942, petitioner was convicted and sentenced in case 26579, to two years' imprisonment in a Penitentiary to be selected by attorney general or his authorized representative, to begin as of the date he was received at such penitentiary *or when received at a jail awaiting transportation to such designated institution* (R. 3, 4). It was further ordered that sentence imposed "run consecutive to the *sentence that defendant is now serving in case No. 21737*" (R. 4).

The authorized representative of the attorney general designated the institution at which sentence was to be

served and pursuant thereto the United States Marshal executed the judgment and sentence by delivering petitioner to the Wayne County Jail *on May 25, 1942,* temporarily pending transfer to designated institution for service of such sentence (R 5).

The main question in this case is the time when petitioner entered upon service of second sentence, imposed on May 25, 1942.

The respondent says petitioner entered upon service of said second sentence on November 10, 1944, *after he had completed service of original sentence* (R. 12, 13).

Petitioner says he entered upon service of said second sentence on May 25, 1942, when he was delivered to the Wayne County Jail temporarily pending transfer to institution designated *before execution of Parole Board warrant for his retaking and before revocation of parole by such Board* (R. 1, 2).

OPINIONS BELOW

The District Court dismissed petitioner's petition for writ of habeas corpus on December 4, 1944 (R. 19). The Sixth Circuit Court of Appeals handed down a written opinion on October 17, 1944, affirming decision of the District Court (R. 25).

JURISDICTION

The judgment of the Circuit Court of Appeals to be reviewed was entered October 17, 1944 (R. 24).

The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code as amended (Title 28, U.S.C. Section 347).

THE QUESTIONS PRESENTED

1. Does sentence of imprisonment to a penitentiary commence to run from date convicted person is received at a jail awaiting transportation to place at which his sentence is to be served?

2. Does unexpired term of imprisonment of a person retaken under Board of Parole warrant for violation of terms of conditional release, begin to run from date of arrest, *or on date he is returned to a Federal Institution?*

3. Does Board of Parole have exclusive jurisdiction respecting time and manner of service of parole violator's unexpired term of imprisonment for first sentence, when, *prior to action of revocation of such parole,* the parolee is sentenced for a second offense?

REASONS RELIED UPON FOR THE ALLOWANCE OF A WRIT OF CERTIORARI

1. The Sixth Circuit Court of Appeals held that petitioner's second sentence of imprisonment, imposed on May 25, 1942, *began to run on date on which he was received at penitentiary* for service of such sentence, rather than on date he was received at local jail awaiting transportation to designated institution; and by implication approved of the action of the sentencing judge requiring the Board of Parole to cause the petitioner to *first* serve the remainder of the sentence originally imposed before second sentence should begin to run.

2. The decision of the Court of Appeals does not consider, discuss or correctly apply the statutory provisions raised by the Record pertinent to this case. The pertinent statutory provisions being set forth in Title 18 U.S.C. Sections 709 (a), 718, 719, 723 (c); such sections being modified under headings: 709 (a) "Time when sentence begins to run"; (718) "officers authorized to execute warrant; expenses." (719) "Action by Board on issue of warrant; Revocation of Parole." 723 (c) "Violation of Parole; Warrant for retaking prisoner; effect of violation on unexpired term of imprisonment"; which statutes are set forth in full and appended hereto.

3. The decision of the Sixth Circuit Court of Appeals is directly contrary to the decisions of this Court and decisions in similar cases in other circuits. (*Zerbst v. Kidwell,* 304 U. S. 359 (1938); *Hammerer v. Huff,* 110 Fed. (2nd) 113, (C. C. A. Dist. Col.); *Tippitt v. Wood,* 140 Fed. (2nd) 689, (C. C. A. Dist. Col.); *Tippitt v. Squier,* 145 Fed. (2nd) 211, (C. C. A. 10)).

WHEREFORE, your petioner prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record of the proceedings in case No. 10033, entitled on its docket, "Anthony Teramine, v. C. J. Shuttleworth, Warden," and that the judgment of said Circuit Court of Appeals in said case may be reversed by this Honorable Court, and that your petioner may have such other and further relief in the premises as to this Honorable Court may seem meet.

And your petitioner will ever pray.

JAMES V. BELLANCA,

DONALD F. WELDAY,
Attorneys for Petitioner.

WILLIAM G. FITZPATRICK, Jr.,
Of Counsel.